IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.881/2007

Reserved on.25.10.2007

Decided on.12.11.2007

Mohan Singh. **…Petitioner.**

Versus

State of H.P. & others.. **…Respondents**

Coram

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting ?[1]*. yes.*

For the petitioner : **Mr. Bimal Gupta, Advocate.**

For the respondents **Mr. M.S. Chandel, Advocate General with Ms. Meenakashi Sharma, Deputy Advocate General for respondents No.1 to 4.**

Mr. Pankaj Sharma, Advocate for respondent No.5.

Rajiv Sharma, J.

The brief facts necessary for the adjudication of this petition are that the applications were called for the allotment of retail sale licenced outlets of country liquor (L-14/L and L-14/A) and Indian made foreign liquor (L-2) for the year 2007-08 in the State of H.P. by way of public notice. The last date of receipt of application forms in the office of AETC/ETOI in respect of Kullu district was three days before the allotment/ draw of lot of the respective districts i.e. 12.3.2007. The petitioner submitted application along with respondent No.5 for Unit No. 22 for L-2 and L-14 licence. The allotment of liquor vend of Unit No.22 was conducted by the selection committee and three persons/firms were selected by way of draw of lots on 12th March 2007 as under:

1. Sh. Pradeep Kumar son of Sohan Lal.

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? yes.

2. Sh. Mohan Singh for M/s Mohan Kumar and Desh Raj & Company.
3. Sh. Ranjit Singh.

The petitioned lodged a complaint with the Deputy Commissioner-cum-Chairman of the Selection Committee i.e. respondent No.3 on 14th March, 2007 stating therein that the allotment of Unit No.22 was made in favour of respondent No.5 on the basis of forged documents tendered by the contractor i.e. power of attorney and application form. The petitioner submitted representation to respondent No.2 on 15th March, 2007 bringing to his notice that signatures on the power of attorney presented before the Selection Committee by respondent No.5 did not match with the original signatures in the application form. Respondent No.2 on 30th March, 2007 kept the approval in favour of respondent No.5 pending till the report of Government Examiner of Questioned Documents was received. Simultaneously the decision was taken by respondent No.2 on the basis of the recommendations of the Committee that M/s Jaswant Rai and Company, who were the licencee for the year 2006-07 be allowed to operate the vend for the period 1st April, 2007 to 30th April, 2007 or earlier on receipt of report of the Government Examiner of Questioned Documents. Respondent No.5 preferred a writ petition against the decision dated 30th March, 2007 before this Court by way of CWP No. 446/2007. During the pendency of CWP No. 446/2007 respondent No.5 made a representation to respondent No.2 on 21.4.2007 stating therein that if the allotment has to be made during the pendency of the receipt of report, the allotment be made to him instead of licencee of previous year i.e. 2006-07. Respondent No.2 vide order dated 21st April, 2007 decided to allow respondent No.5 to run the vend by granting licence in his favour subject to the report of the Government Examiner of Questioned

Documents. Consequently the writ petition bearing No.446/2007 was withdrawn on 25.4.2007. The judgment dated 25.4.2007 reads thus:

> **"25.4.2007. Present: Mr. Sandeep Kaushik, counsel for the petitioner.**
> **Mr. M.S. Chandel, Advocate, General, with Mr. J.K. Verma, Dy. A.G. for respondent Nos. 1 to 4.**
> **Mr. Bimal Gupta, Advocate, for respondent No. 5.**
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> **During the pendency of this writ petition an order has been passed by respondent No. 2 on 21st April, 2007 allowing Vend No. 22 in favour of the petitioner but keeping it subject to the decision/report of the Government Examiner, Questioned Documents. Because of this intervening development Mr. Kaushik seeks leave of this court to withdraw this petition with liberty to the petitioner to approach this court again if the decision ultimately goes against the petitioner. Prayer allowed. The petition is dismissed as withdrawn."**

Respondent No.2 on 28th April, 2007 informed respondent No.5 that since the case has been settled in the High Court, therefore, no action was proposed to be taken on the report of the Government Examiner of Questioned Documents and the matter stood closed. The text of the letter dated 28th April, 2007 reads thus:

> **"It is to inform you that since the case has been settled in the Hon'ble High Court. Therefore, no action is proposed to be taken on the report of Examiner of Questioned Document. The matter stands closed."**

The Government Examiner of Questioned Documents sent the report to respondent No.2 dated 15th May, 2007. The Assistant Government Examiner gave a categorical report that the differences in signatures were of fundamental in nature and were beyond the range of natural variations and intended disguise and when considered collectively lead to the opinion of being different authorship. It appears that after the

receipt of the report, the petitioner has also made a representation to respondent No.2 to take action on the report. In sequel to the report dated 15th May, 2007, notice was issued to respondent No.5 by respondent No.2 on 6th July, 2007 to explain his position as to why action in accordance with law be not taken against him. The reply was to be furnished by respondent No.5 within three days from the date of receipt of notice. Respondent No.5 filed a detailed reply on 9th July, 2007. Respondent No.2 did not take any action after the receipt of the reply and had chosen to seek opinion of the Law Department vide communication dated 19th July, 2007. The Court had directed the respondents to produce the record, which was produced by respondents No.1 to 3 in piecemeal on different dates. The Law Department had given the opinion that the opinion of the expert was not final and thereafter it appears that no action was taken by respondent No.2 against respondent No.5. The opinion rendered by the Law Department as reproduced in communication dated 25th August, 2007 produced at the time of hearing of the case by the learned Advocate General, reads thus:

> **"since no loss to the State Revenue has been caused by the licensee and in his reply the licensee has admitted that "all signatures are mine and mine alone," therefore, there seems to be no logic for cancellation of license for liquor vends of Unit No.22 issued in favour of the licensee. Moreover, as per the law of Evidence the science of handwriting is not an exact science unlike the science of finger prints & Even Experts tend to commit errors in giving their opinions on the genuineness of the signatures and hand writing. Thus keeping in view the legal position and reply of the licensee, the license issued in his favour is not required to be cancelled particularly when he himself is admitting his signatures."**

Mr. Bimal Gupta, Advocate had strenuously argued that there was difference in the signatures of respondent No.5, which he has appended

on the application form and signatures on the power of attorney appended as an executant. He further submitted that once respondent No.2 had chosen to get the report from the Government Examiner of Questioned Documents vide communication dated 30th March, 2007 and the report was received on 15th May, 2007, the same was required to be acted upon, meaning thereby the allotment made in favour of respondent No.5 was to be revoked. Mr. Gupta further argued that the authorities have passed contrary orders from time to time for the extraneous reasons resulting in undue favour extended to respondent No.5. He finally argued that the allotment made in favour of respondent No.5 vide letter dated 21.4.2007 was to be revoked and petitioner being at Sr. No.2 in the panel was to be allotted licence for L-2 and L-14 of Unit No. 22 in District Kullu.

The learned Advocate General had supported the orders passed by respondents No.1 to 4 from time to time.

Mr. Pankaj Sharma, Advocate for respondent No.5 had also supported the orders passed by the authorities and had taken additional ground that the report of the Government Examiner of Questioned Documents was not final and conclusive and the same has rightly not been taken into consideration by respondent No.2.

I have heard the learned counsel for the parties and perused the record.

Before the rival submissions of the learned Advocates are taken into consideration, it will apt to take note of the certain features of the notice whereby the applications for allotment of retail sale licenced outlets of country liquor, Indian made foreign liquor and retail sale of country fermented liquor for general public were called for the year 2007-08. Items No. 1 to 6 and 13 being relevant read thus:

1. **"The applications are required to be furnished separately for each retail licensed outlets of Country Liquor and Indian**

Made Foreign Liquor and retail sale of country fermented liquor. The application form as well as list of vends with details is available free of cost with all the Asstt. Excise and Taxation Commissioner's/Excise and Taxation Officer Incharge of the districts and Zonal Incharges at Shimla, Mandi, Palampur as well as in the office of the Excise and Taxation Commissioner, Himachal Pradesh.

2. **An applicant can apply for any number of vends/units but an applicant is eligible to get a maximum of 3 vends/units in urban and rural areas respectively but on separate application for each vend/unit.**
3. **The list of eligible applicants shall be displayed on a notice board in the office of txhe Assistant Excise and Taxation Commissioner/Excise and Taxation Officer Incharge of the district one day before the day of draw of lot.**
4. **The Basic License free, annul license free, quota, location for each retail licensed outlet vend/unit of Country Liquor and Indian Made Foreign Liquor has been fixed separately and is mentioned in the list of vends.**
5. **The allotment shall be made on an application and in case of more than one application for a particular vend/unit, the allotment shall be by draw of lot. The draw of lot in such eventuality shall be conducted by a Committee consisting of Deputy Commissioner of the District, a representative of the Excise and Taxation Commissioner, Deputy Excise and Taxation Commissioner of the respective Zone and Asstt. Excise and Taxation Commissioner/Excise and Taxation Officer Incharge of the District in the presence of the applicants who wish to be present on the date of draw.**
6. **After the allotment/draw of lot, the list of successful allottees shall be displayed on the notice board in the Office of the Assistant Excise and Taxation Commissioner/Excise and Taxation Officer of the respective district.**

13. **Verification of particulars would be made in respect of the successful allottees before the license is actually granted."**

It will also be pertinent to take note of the Announcements made by the Department of Excise and Taxation for the financial year 2007-08 whereby as per para 2 of Chapter-II, 'Allotment of Vends on Application and Grant of Licences', the lincecee were to be granted by inviting applications for each vend/predetermined combination of vends termed as unit. The applications were required to be submitted in accordance with the procedure prescribed. It is evident from the Announcements that the applications were to be submitted to the Assistant Excise and Taxation Commissioner/Excise and Taxation Officer Incharge of the district concerned who was required to prepare a list of all the applications received by him and prepare a summary of all eligible applicants for placing the same before the Selection Committee. The Selection Committee at the district –level consisted of Deputy Commissioner of the district concerned, Collector of the zone concerned, Assistant Excise and Taxation Commissioner/Excise and Taxation Officer Incharge of the concerned district and any other gazetted officer of the Department nominated by the Excise and Taxation Commissioner.

The petitioner as well as respondent No.5 had submitted applications in the prescribed proforma. The Selection Committee after screening the applications had prepared the following panel:

1. Sh. Pradeep Kumar son of Sohan Lal.
2. Sh. Mohan Singh for M/s Mohan Kumar Desh Raj & Company.
3. Sh. Ranjit Singh.

The allotment was made in favour of respondent No.5, which was objected to by the petitioner on 14th March, 2007 as well as on 15th March, 2007. The gist of the complaint was that the signatures in the application form appended by respondent No.5 did not match with the signatures appended by him in the power of attorney executed by him in favour of Sh.

Sandeep Chawla. Respondent No.2 on the basis of the objections lodged by the petitioner on 30th March, 2007 had decided to refer the signatures to the Government Examiner of Questioned Documents, but simultaneously an illegal decision was taken by him to permit the licencee of the previous year i.e. 2006-07 M/s Jaswant Rai and Company to run the vend for the period 1st April, 2007 to 30th April, 2007. This decision by respondent No.2 was wholly against the provisions of law. No such provision has been shown by the learned Advocate General on the basis of which a special favour was made in favour of the existing licencee i.e. M/s Jaswant Rai and Company by permitting them to run the vend for complete one month i.e. 1st April, 2007 to 30th April, 2007. This is the first illegality which has been committed by respondent No.2. This order was assailed before this Court by respondent No.5 by way of CWP No. 446/2007. Astonishingly though this Court was seized of the matter in CWP No. 446/2007, yet respondent No.2 passed an order on 21.4.2007 deciding to allot the vend in favour of respondent No.5 subject to the receipt of the report of the Government Examiner of Questioned Documents. Once this Court was seized of the matter, it was imperative for respondent No.2 to wait for the out come of writ petition bearing CWP No. 446/2007 instead of pre-empting this Court from passing any final order. This is the second illegality/impropriety committed by respondent No.2 while dealing with this case. CWP No. 446/2007 was withdrawn by respondent No.5 on 25th April, 2007. The text of the judgment dated 25.4.2007 has already been reproduced above. It is evident from the reading of the entire judgment that the writ petition was withdrawn by respondent No.5 on the basis of order dated 21.4.2007 passed by respondent No.2, meaning thereby that there was no adjudication on merits by this Court. Respondent No.2 strangely enough has informed

respondent No.5 on 28th April, 2007 that since the case has been settled by this Court, no action was proposed to be taken on the report of the Government Examiner of Questioned Documents and the matter stand closed. The text of letter dated 28th April, 2007 has been already extracted above.

There are two things which need deeper scrutiny by this Court. Firstly, the matter was never settled by this Court, to the contrary CWP No. 446/2007 was withdrawn. Secondly, once respondent No.2 himself has sought for the report from the Government Examiner of Questioned Documents how without waiting for the same, he could declare the matter to be closed. This is the third illegality which he had committed contrary to the record.

The Government Examiner of Questioned Documents had submitted his opinion/report to respondent No.2 on 15th May, 2007. The Assistant Government Examiner had opined that the persons, who wrote these signatures in the red enclosed portions stamped and marked B-1 to B-5 did not write the signatures in the red enclosed portions similarly stamped and marked A-1 to A-3, C-1 and Q-1, meaning thereby the signatures on both the documents were not appended by the same person. It will be apt to reproduce the reasons for opinion given by Assistant Government Examiner, which reads thus:

> **"My opinion that "The person who wrote these signatures in the red enclosed portions stamped and marked B-1 to B-5 did not write the signatures in the red enclosed portions similarly stamped and marked A-1 to A-3, C-1 and Q-1", is based upon the following considerations:-**
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> **Inter-se comparison of the signatures in the red enclosed portions marked B1 to B5 show characteristic similarities in writing habits as such they form suitable & sufficient standards for comparison. The questioned signatures marked Q1, A1 to A3 and C1 when compared with**

the standard signatures similarly stamped and marked B1 to B5; show difference in general writing habits, such as: movement, skill, speed, slant, spacing, alignment, relative size, proportion of strokes and their combinations. The questioned signatures marked Q1 appear to be slow and drawn in execution with carefully executed strokes. The questioned signatures show characteristics differences in individual writing habits with the standard signatures similarly stamped and marked B1 to B5; some of such differences observed in the execution of various letters & their combination and manner of execution of the character representing letter 'K' in the word 'Kumar' with nature and location of its start, nature and extent of its staff, nature of the angularity formed at the base of its staff, manner of formation of its buckle in continuation to its staff, nature and location of its buckle together with the manner of joining it with the succeeding character representing 'u' with an extended stroke; manner of execution of letter 'u', nature of curvature of its body part, nature and extent of its initial downward stoke vis-à-vis its final upward stroke together with manner of joining it with the succeeding character representing 'm', completely different manner of execution of letter representing 'm' with nature of its shoulders as observed in standard signatures whereas it is executed with garlanded movement in questioned signatures as well as extent and direction if its finish; manner of formation of final character 'r' with nature and location of its start, nature of the angularity formed in its lower part together the extent and direction of finish as observed in standard signatures is nowhere similarly observed in the questioned signatures, the aforesaid character 'r' is executed in completely different manner in questioned signatures marked A1 to A3 and C!; manner of execution of letter representing 'p' in a separate operation in the standard signatures whereas is executed in continuation to the letter representing 'u' (in the word 'Kumar') as observed in the questioned signatures A1 to A3 and C1 as well as its execution is found also to be different in the questioned signature Q1.

The above mentioned differences are fundamental in nature and are beyond the range of natural variations and intended disguise and when considered collectively lead me to the aforesaid opinion of different authorship."

The respondent No.2 though had decided on 28th April, 2007 to treat the matter closed by stating that no action was proposed to be taken on the report of the Government Examiner of Questioned Documents but still sent a notice to respondent No.5 on 6th July, 2007. Respondent No.2 has called reply from respondent No.5 within three days to explain his position and as to why action in accordance with law be not taken against him. Respondent No.5 had submitted the reply on 9th July, 2007. It was the occasion for respondent No.2 to take action against respondent No.5 in accordance with law, more particularly, when he was armed with the report of the Government Examiner of Questioned Documents. Respondents No.2 for the reasons best known to him did not take any action against respondent No.5 and decided to send the matter for the opinion of the Law Department. The Law Department had given the opinion that the opinion of the expert was not conclusive. Respondent No.2 then sought the opinion of the learned Advocate General in writing, but according to the stand taken by him before this Court, learned Advocate General informed his office that he endorses the opinion of Law Department. The learned Advocate General had submitted that it was not incumbent upon respondent No.2 to accept the report of the Government Examiner of Questioned Documents dated 15th Mary, 2007 and respondent No.2 was within his legal right to seek the opinion of the Law Department.

This Court had itself compared the signatures after perusing the record marked as A-1, A-2, A-3 vis-à-vis C-1. There is no similarity between the signatures appended to the application form and the power of

attorney executed by the respondent No.5. The Court is fortified in taking this view on the basis of the report of the handwriting expert, dated 15th May, 2007 as well.

The Hon'ble Supreme Court has dealt with the evidentiary value given to the opinion of handwriting expert in ***Fakhruddin v. The State of Madhya Pradesh, AIR 1967 SC 1326***. Their Lordships have held as under:

> **"Evidence of the identity of handwriting receives treatment in three sections of the Indian Evidence Act. They are Sections 45, 47 and 73. Handwriting may be proved on admission of the writer, by the evidence of some witness in whose presence he wrote. This is direct evidence and if it is available the evidence of any other kind rendered unnecessary. The Evidence Act also makes relevant the opinion of a handwriting expert (S. 45) or of one who is familiar with the writing of a person who is said to have written a particular writing. Thus besides direct evidence which is of course the best method of proof, the law makes relevant two other modes. A Writing may be proved to be in the handwriting of a particular individual by the evidence of a person familiar with the handwriting of that individual or by the testimony of an expert competent to the comparison of handwritings on a scientific basis. A third method (S. 73) is comparison by the Court with a writing made in the presence of the Court or admitted or proved to be the writing of the person.**
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> **Both under S. 45 and S. 47 the evidence is an opinion, in the former by a scientific comparison and in the latter on the basis of familiarity resulting from frequent observations and experience. In either case the Court must satisfy itself by such means as are open that the opinion may be acted upon. One such means open to the Court is to apply its own observation to the admitted or proved writings and to compare them with the disputed one, not to become an handwriting expert but to verify the premises of the expert in**

the one case and to appraise the value of the opinion in the other case. This comparison depends on an analysis of the characteristics in the admitted or proved writings and the finding of the same characteristics in large measure in the disputed writing. In this way the opinion of the deponent whether expert or other is subjected to scrutiny and although relevant to start with becomes probative. Where an expert's opinion is given, the Court must see for itself and with the assistance of the expert come to its own conclusion whether it can safely he held that the two writings are by the same person. This is not to say that the Court must play the role of an expert but to say that Court may accept that fact proved only when it has satisfied itself on its own observation that it is safe to accept the opinion whether of the expert or other witness."

Their Lordships of the Hon'ble Supreme Court have held in ***Murarilal v. State of M.P., AIR 1980 SC 531*** that there is no rule of law, nor any rule of prudence which has crystalised into rule of law, that opinion evidence of a handwriting expert must never be acted upon, unless substantially corroborated. Their Lordships of the Hon'ble Supreme Court have held as under:-

"Expert testimony is made relevant by S. 45 of the Evidence Act and where the Court has to form an opinion upon a point as to identity of handwriting, the opinion of a person 'specially skilled' 'in questions as to identity of handwriting' is expressly made a relevant fact. There is nothing in the Evidence Act, as for example like Illustration (b) to Section 114 which entitles the Court to presume that an accomplice is unworthy of credit, unless he is corroborated in material particulars, which justifies the court in assuming that a handwriting expert's opinion is unworthy of credit unless corroborated. The Evidence Act itself (S. 3) tells us that 'a fact is said to be proved when, after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man ought, under the

circumstances of the particular case, to act upon the supposition that it exists'. It is necessary to occasionally remind ourselves of this interpretation clause in the Evidence Act lest we act on artificial standard of proof not warranted by the provisions of the Act. Further, under S. 114 of the Evidence Act, the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to facts of the particular case. It is also to be noticed that S. 46 of the Evidence Act makes facts, not otherwise relevant, relevant if they support or are inconsistent with the opinion of experts, when such opinions are relevant. So, corroboration may not invariably be insisted upon before acting on the opinion of an handwriting expert and there need to no initial suspicion. But, on the facts of a particular case, a court may require corroboration of a varying degree. There can be no hard and fast rule, but nothing will justify the rejection of the opinion of an expert supported by unchallenged reasons on the sole ground that it is not corroborated. The approach of a court while dealing with the opinion of a handwriting expert should be to proceed cautiously, probe the reasons for the opinion, consider all other relevant evidence and decide finally to accept or reject it.

Finally, we come to Magan Bihari Lal v. State of Punjab, AIR 1977 SC 1091 upon which Sri R. C. Kohli, learned counsel, placed great reliance. It was said by this Court:

"... but we think it would be extremely hazardous to condemn the appellant merely on the strength of opinion evidence of a handwriting expert. It is now well settled that expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of a handwriting expert. There is a profusion of precedential authority which holds that it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of

law. It was held by this Court in Ram Chandra v. State of U. P., AIR 1957 SC 381 that it is unsafe to treat expert handwriting opinion as sufficient basis for conviction, but it may be relied upon when supported by other items of internal and external evidence. This Court again pointed out in Iswari Prasad v. Md. Isa, AIR 1963 SC 1728 that expert evidence of handwriting can never be conclusive because it is, after all, opinion evidence, and this view was reiterated in Shashi Kumar v. Subodh Kumar, AIR SC 529 where it was pointed out by this Court that expert's evidence as to handwriting being opinion evidence can rarely, if ever, take the place of substantive evidence and before acting on such evidence, it would be desirable to consider whether it is corroborated either by clear direct evidence or by circumstantial evidence. This Court had again occasion to consider the evidentiary value of expert opinion in regard to handwriting in Fakhruddin v. State of M. P., AIR 1967 SC 1326 and it uttered a note of caution pointing out that it would be risky to found a conviction solely on the evidence of a handwriting expert and before acting upon such evidence, the court must always try to see whether it is corroborated by other evidence, direct or circumstantial."

The above extracted passage, undoubtedly, contains some sweeping general observations. But we do not think that the observations were meant to be observations of general application or as laying down any legal principle. It was plainly intended to be a rule of caution and not a rule of law as is clear from the statement 'it has almost become as rule of law'. 'Almost', we presume, means 'not quite'. It was said by the Court there was a 'profusion of precedential authority' which insisted upon corroboration and reference was made to Ram Chandra v. State of U. P., Ishwari Prasad v. Mohammed Isa, Shashi Kumar v. Subodh Kumar and Fakhruddin v. State of M. P. We have already discussed these cases and observed that none of them supports the proposition that corroboration must invariably be sought before opinion evidence can be accepted. There appears to be some mistake in the last sentence of the above extracted passage because we are

unable to find in Fakhruddin v. State of Madhya Pradesh any statement such as the one attributed. In fact, in that case, the learned Judges acted upon the sole testimony of the expert after satisfying themselves about the correctness of the opinion by comparing the writings themselves. We do think that the observations in Magan Bihari Lal v. State of Punjab must be understood as referring to the facts of the particular case.

We are firmly of the opinion that there is no rule of law, nor any rule of prudence which has crystallised into a rule of law, that opinion evidence of a handwriting expert must never be acted upon, unless substantially corroborated. But, having due regard to the imperfect nature of the science of identification of handwriting, the approach, as we indicated earlier, should be one of caution. Reasons for the opinion must be carefully probed and examined. All other relevant evidence must be considered. In appropriate cases, corroboration may be sought. In cases where the reasons for the opinion are convincing and there is no reliable evidence throwing a doubt, the uncorroborated testimony of an handwriting expert may be accepted. There cannot be any inflexible rule on a matter which, in the ultimate analysis, is no more than a question of testimonial weight. We have said so much because this is an argument frequently met with in subordinate courts and sentences torn out of context from the judgments of this Court are often flaunted.

The argument that the Court should not venture to compare writings itself, as it would thereby assume to itself the role of an expert is entirely without force. Section 73 of the Evidence Act expressly enables the Court to compare disputed writings with admitted or proved writings to ascertain whether a writing is that of the person by whom it purports to have been written. If it is hazardous to do so, as sometimes said, we are afraid it is one of the hazards to which judge and litigant must expose themselves whenever it becomes necessary. There may be cases where both sides

call experts and the voices of science are heard. There may be cases where neither side calls an expert, being ill able to afford him. In all such cases, it becomes the plain duty of the Court to compare the writings and come to its own conclusion. The duty cannot be avoided by recourse to the statement that the court is no expert. Where there are expert opinions, they will aid the Court. Where there is none, the Court will have to seek guidance from some authoritative textbook and the Court's own experience and knowledge. But discharge it must, its plain duty, with or without expert, with or without other evidence. We may mention that Shashi Kumar v. Subodh Kumar and Fakhruddin v. State of Madhya Pradesh were cases where the Court itself compared the writings."

Similarly, the Hon'ble Rajasthan High Court has held in ***Ameer Mohammad v. Barkat Ali, AIR 2002 Raj. 406*** that the opinion of the handwriting expert cannot be rejected on the ground that he is remunerated witness or that it is based on imperfect science. The Hon'ble Single Judge has held as under:-

"In the light of the decision of the Hon'ble Apex Court, I have to examine the opinion given by the handwriting expert PW-3 Krishna Charan and his evidence cannot be rejected only on the ground that he was paid by the plaintiff for giving opinion nor it can be rejected solely on the ground that the opinion is based upon an imperfect science. In view of the decision of the Hon'ble Apex Court, all the facts and circumstances are required to be seen and the opinion of the expert also cannot be accepted merely because the expert has given opinion in favour of the case of the plaintiff and there is no rebuttal evidence from the defendant as the defendant has not produced any expert to controvert the evidence of the expert. What the Hon'ble Apex Court held is that the opinion of the handwriting expert is required to be carefully considered and examined because of the reason that the identification of the

handwriting is not so perfect that it excludes the chances of risk."

The Hon'ble Supreme Court has held in ***Alamgir versus State (NCT, Delhi), (2003) 1 SCC 21*** it is not possible to accept the contention that the handwriting expert's opinion being weak piece of evidence ought not to be relied upon. Their Lordships have held as under:-

"The above-extracted passage, undoubtedly, contains some sweeping general observations. But we do not think that the observations were meant to be observations of general application or as laying down any legal principle. It was plainly intended to be a rule of caution and not a rule of law as is clear from the statement 'it has *almost* become a rule of law'. 'Almost', we presume, means 'not quite'. It was said by the Court there was a 'profusion of precedential authority' which insisted upon corroboration and reference was made to *Ram Chandra v. State of U.P., Ishwari Prasad v. Mohd. Isa, Shashi Kumar v. Subodh Kumar* and *Fakhruddin v. State of M.P.* We have already discussed these cases and observed that none of them supports the proposition that corroboration must invariably be sought before opinion-evidence can be accepted. There appears to be some mistake in the last sentence of the above-extracted passage because we are unable to find in *Fakhruddin v. State of M.P.* any statement such as the one attributed. In fact, in that case, the learned Judges acted upon the sole testimony of the expert after satisfying themselves about the correctness of the opinion by comparing the writings themselves. We do not think that the observations in *Magan Bihari Lal v. State of Punjab* must be understood as referring to the facts of the particular case."

In fine, in *Murari Lal* this Court stated that there is no rule of law, nor any rule of prudence which has crystalised into a rule of law that opinion-evidence of a handwriting expert must never be acted upon, unless substantially

> **corroborated. We feel it expedient to record our concurrence therewith, though, however, we hasten to add that since human judgment cannot be said to be totally infallible, due caution shall have to be exercised and the approach ought to be that of care and caution and it is only upon probe and examination the acceptability or creditworthiness of the same depends. The learned Sessions Judge as also the High Court did place, upon consideration of all relevant facts and material on record, reliance on the opinion of the handwriting expert and we do not see any reason to record a contra-finding."**

The learned Advocate General had further argued that as per notice inviting tender, it was not necessary for the parties to be present at the time of draw of lots as per clause 5 which had already been reproduced above. True it is that presence of applicants was not mandatory at the time of draw of lots, but in the present case, respondent No.5 had signed the application and his representative on the basis of power of attorney executed in his favour was present on 12th March, 2007 and had participated in the deliberations before the Selection Committee. The Government Examiner of Questioned Documents has categorically held that the signatures on the power of attorney were not of respondent No.5. Consequently the person, who was not duly authorized, had attended the proceedings on 12th March, 2007, which is not permissible under law. The norms laid down were required to be scrupulously followed. In the present case respondent No.5 admittedly had signed the application for allotment of Unit No.22 for L-2 and L-14 licences. The illegality which has been committed by respondent No.5 is that the signatures on the power attorney were not his as opined by the Government Examiner of Questioned Documents. It was incumbent upon respondent No.2 to consider the report of the Government Examiner of Questioned Documents in its right perspective. The well reasoned

opinion/report of the Government Examiner of Questioned Documents has been brushed aside by respondent No.2 only by stating that respondent No.5 had stated the signatures on both the documents i.e. application and power of attorney were his. Respondent No.2 should have acted immediately after the receipt of the report and the reply by cancelling the allotment made in favour of respondent No.5. The opinion rendered by the Law Department is not convincing. The Court had occasion to go through the entire report and agrees with opinion given in the expert report dated 15.5.2007 and declines to accept the opinion given by the Law Department contrary to law.

The Hon'ble Supreme Court has held in ***Ramana Dayaram Shetty v. The International Airport Authority of India and others, AIR 1979 SC 1628*** that the institution while dealing with the public, whether by way of giving jobs or entering into contracts or otherwise, it cannot act arbitrarily and enter into relationship with any person it likes at its sweet will, but its action must be in conformity with some principles which meet the test of reason and relevance. Their Lordships have held as under:-

> **"Now, obviously where a corporation is an instrumentality or agency of Government, it would, in the exercise of its power or discretion, be subject to the same constitutional or public law limitations as Government. The rule inhibiting arbitrary action by Government which we have discussed above must apply equally where such corporation is dealing with the public, whether by way of giving jobs or entering into contracts or otherwise, and it cannot act arbitrarily and enter into relationship with any person it likes at its sweet will, but its action must be in conformity with some principle which meets the test of reason and relevance.**
>
> **This rule also flows directly from the doctrine of equality embodied in Art. 14. It is now well settled as a result of the decisions of this Court in E. P. Royappa v. State of Tamil**

Nadu, (1974) 2 SCR 348 : (AIR 1974 SC 555) and Maneka Gandhi v. Union of India, (1978) 1 SCC 248 : (AIR 1978 SC 597) that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational and relevant principle which is non-discriminatory : it must not be guided by any extraneous or irrelevant consideration, because that would be denial of equality. The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is projected by Article 14 and it must characterise every State action, whether it be under authority of law or in exercise of executive power without making of law. The State cannot, therefore act arbitrarily in entering into relationship, contractual or otherwise with a third party, but its action must conform to some standard or norm which is rational and non-discriminatory. This principle was recognised and applied by a Bench of this Court presided over by Ray, C. J., in Erusian Equipment and Chemicals Ltd. v. State of West Bengal (AIR 1975 SC 266) (supra) where the learned Chief Justice pointed out that 'the State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. The order of blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of black-listing -A citizen has a right to claim equal treatment to enter into a contract which may be proper, necessary and essential to his lawful calling - It is true that neither the petitioner nor the respondent has any right to

enter into a contract but they are entitled to equal treatment with others who offer tender or quotations for the purchase of the goods.' It must, therefore follow as a necessary corollary from the principle of equality enshrined in Article 14 that though the State is entitled to refuse to enter into relationship with any one, yet if it does so, it cannot arbitrarily choose any person it likes for entering into such relationship and discriminate between persons similarly circumstanced, but it must act in conformity with some standard or principle which meets the test of reasonableness and non-discrimination and any departure from such standard or principle would be invalid unless it can be supported or justified on some rational and non-discriminatory ground."

The Hon'ble Apex Court has held in ***M/s. Kasturi Lal Lakshmi Reddy versus State of Jammu and Others, (1980) 4 SCC 1*** that there are two limitations which structure and control the discretion of the Government in regard to grant of largess by it. The first is in regard to the terms on which largess may be granted and the other, in regard to the person who may be recipients of such largess. Their Lordships have held as under:-

"It was pointed out by this Court in "Ramana Dayaram Shetty v. The International Airport Authority of India (1979) 3 SCC 489 : (AIR 1979 SC 1628)" that with the growth of the welfare State, new forms of property in the shape of Govt. largesse are developing, since the Government is increasingly assuming the role of regulator and dispenser of social services and provider of a large number of benefits including jobs, contracts, licences, quotas, mineral rights etc. There is increasing expansion of the magnitude and range of governmental functions, as we move closer to the welfare State, and the result is that more and more of our wealth consists of these new forms of property. Some of these forms of wealth may be in the nature of legal rights but the large majority of them are in the nature of privileges. The law has however not been slow to recognise the importance of this

new kind of wealth and the need to protect individual interest in it and with that end in view, it has developed new forms of protection. Some interests in Government largesse, formerly regarded as privileges, have been recognised as rights, while others have been given legal protection not only by forging procedural safeguards but also by confining, structuring and checking Government discretion in the matter of grant of such largesse. The discretion of the Government has been held to be not unlimited in that Government cannot give largess in its arbitrary discretion or at its sweet will or on such terms as it chooses in its absolute discretion. There are two limitations imposed by law which structure and control the discretion of the Government in this behalf. The first is in regard to the terms on which largesse may be granted and the other, in regard to the persons who may be recipients of such largesse.

So far as the first limitation is concerned, it flows directly from the thesis that, unlike a private individual, the State cannot act as it pleases in the matter of giving largesse. Though ordinarily a private individual would be guided by economic considerations of self-gain in any action taken by him, it is always open to him under the law to act contrary to his self-interest or to oblige another in entering into a contract or dealing with his property. But the Government is not free to act as it likes in granting largess such as awarding a contract or selling or leasing out its property. Whatever be its activity, the Government is still the Government and is, subject to restraints inherent in its position in a democratic society. The constitutional power conferred on the Government cannot be exercised by it arbitrarily or capriciously or in an unprincipled manner, it has to be exercised for the public good. Every activity of the Government has a public element in it and it must, therefore, be informed with reason and guided by public interest. Every action taken by the Government must be in public interest; the Government cannot act arbitrarily and without reason and if it does, its action would be liable to be invalidated. If the Government awards a contract or leases

out or otherwise deals with its property or grants any other largesse, it would be liable to be tested for its validity on the touchstone of reasonableness and public interest and if it fails to satisfy either test, it would be unconstitutional and invalid.

Now what is the test of reasonableness which has to be applied in order to determine the validity of governmental action. It is undoubtedly true, as pointed out by Patanjali, Sastri J., in State of Madras v. V. G. Row (1952) SCR 597 : (AIR 1952 SC 196), that in forming his own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the Judge participating in the decision, would play an important part, but even so, the test of reasonableness is not a wholly subjective test and its contours are fairly indicated by the Constitution. The concept of reasonableness in fact pervades the entire constitutional scheme. The interaction of Articles 14, 19 and 21 analysed by this Court in Maneka Gandhi v. Union of India, (1978) 2 SCR 621 : (AIR 1978 SC 597) clearly demonstrates that the requirement of reasonableness runs like a golden thread through the entire fabric of fundamental rights and, as several decisions of this Court show, this concept of reasonableness finds its positive manifestation and expression in the lofty ideal of social and economic justice which inspires and animates the Directive Principles. It has been laid down by this Court in E. P. Royappa v. State of Tamil Nadu, (1974) 2 SCR 348 : (AIR 1974 SC 555) and Maneka Gandhi's case (supra) that Article 14 strikes at arbitrariness in State action and since the principle of reasonableness and rationality, which is legally as well as philosophically an essential element of equality or non-arbitrariness, is projected by this article, it must characterise every governmental action, whether it be under the authority of law or in exercise of executive power without making of law. So also the concept of reasonableness runs through the totality of Article 19 and requires that restrictions on the freedoms of the citizen, in order to be permissible, must at the

best be reasonable. Similarly Art. 21 in the full plenitude of its activist magnitude as discovered by Maneka Gandhi's case, insists that no one shall be deprived of his life or personal liberty except in accordance with procedure established by law and such procedure must be reasonable, fair and just. The Directive Principles concretise and give shape to the concept of reasonableness envisaged in Articles 14, 19 and 21 and other articles enumerating the fundamental rights. By defining the national aims and the constitutional goals, they set forth the standards or norms of reasonableness which must guide and animate governmental action. Any action taken by the Government with a view to giving effect to any one or more of the Directive Principles would ordinarily, subject to any constitutional or legal inhibitions or other overriding considerations, qualify for being regarded as reasonable, while an action which is inconsistent with or runs counter to a Directive Principle would prima facie incur the reproach of being unreasonable.

So also the concept of public interest must as far as possible receive its orientation from the Directive Principles. What according to the founding fathers constitutes the plainest requirement of public interest is set out in the Directive Principles and they embody par excellence the constitutional concept of public interest. If, therefore, any governmental action is calculated to implement or give effect to a Directive Principle, it would ordinarily, subject to any other overriding considerations, be informed with public interest.

Where any governmental action fails to satisfy the test of reasonableness and public interest discussed above and is found to be wanting in the quality of reasonableness or lacking in the element of public interest, it would be liable to be struck down as invalid. It must follow as a necessary corollary from this proposition that the Government cannot act in a manner which would benefit a private party at the cost of the State; such an action would be both unreasonable and

contrary to public interest. The Government, therefore, cannot for example, give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to do so. Such considerations may be that some Directive Principle is sought to be advanced or implemented or that the contract or the property is given not with a view to earning revenue but for the purpose of carrying out a welfare scheme for the benefit of a particular group or section of people deserving it or that the person who has offered a higher consideration is not otherwise fit to be given the contract or the property. We have referred to these considerations only illustratively, for there may be an infinite variety of considerations which may have to be taken into account by the Government in formulating its policies and it is on a total evaluation of various considerations which have weighed with the Government in taking a particular action, that the Court would have to decide whether the action of the Govt. is reasonable and in public interest. But one basic principle which must guide the Court in arriving at its determination on this question is that there is always a presumption that the governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the Court by proper and adequate material. The Court cannot lightly assume that the action taken by the Government is unreasonable or without public interest because, as we said above, there are a large number of policy considerations which must necessarily weigh with the Government in taking action and therefore the Court would not strike down governmental action as invalid on this ground, unless it is clearly satisfied that the action is unreasonable or not in public interest. But where it is so satisfied, it would be the plainest duty of the Court under the Constitution to invalidate the governmental action. This is one of the most important functions of the Court and also one of

the most essential for preservation of the rule of law. It is imperative in a democracy governed by the rule of law that governmental action must be kept within the limits of the law and if there is any transgression, the Court must be ready to condemn it. It is a matter of historical experience that there is a tendency in every government to assume more and more powers and since it is not an uncommon phenomenon in some countries that the legislative check is getting diluted, it is left to the Court as the only other reviewing authority under the Constitution to be increasingly vigilant to ensure observance with the rule of law and in this task, the court must not flinch or falter. It may be pointed out that this ground of invalidity, namely, that the governmental action is unreasonable or lacking in the quality of public interest, is different from that of mala fides though it may, in a given case, furnish evidence of mala fides.

The second limitation on the discretion of the Government in grant of largess is in regard to the persons to whom such largesse may be granted. It is now well settled as a result of the decision of this Court in Ramana D. Shetty v. International Airport Authority of India, (AIR 1979 SC 1628) (supra) that the Government is not free, like an ordinary individual, in selecting the recipients for its largesse and it cannot choose to deal with any person it pleases in its absolute and unfettered discretion. The law is now well established that the Government need not deal with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure. Where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with some standard or norm which is not arbitrary, irrational or irrelevant. The governmental action must not be arbitrary or capricious, but must be based on some principle which meet the test of reason and relevance. This rule was enunciated by the Court as a rule of administrative law and it

was also validated by the Court as an emanation flowing directly from the doctrine of equality embodied in Article 14. The Court referred to the activist magnitude of Article 14 as evolved in E. P. Royappa v. State of Tamil Nadu (AIR 1974 SC 555) (supra) and Maneka Gandhi's case (AIR 1978 SC 597) (supra) and observed that it must follow "as a necessary corollary from the principle of equality enshrined in Article 14 that though the State is entitled to refuse to enter into relationship with anyone, yet if it does so, it cannot arbitrarily choose any person it likes for entering into such relationship and discriminate between persons similarly circumstanced, but it must act in conformity with some standard or principle which meets the test of reasonableness and non-discrimination and any departure from such standard or principle would be invalid unless it can be supported or justified on some rational and non-discriminatory ground". This decision has re-affirmed the principle of reasonableness and non-arbitrariness in governmental action which lies at the core of our entire constitutional scheme and structure."

The Hon'ble Apex Court in ***Mahavir Auto Stores and others versus Indian Oil Corporation and Others, (1990) 3 SCC 752*** has held that if a Government action even in the matters of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable. It is further held that rule of reason and rule against arbitrariness and discrimination, rule of fair play and natural justice are part of the rule of law applicable in a situation or action by State instrumentality in dealing with the citizens. Their Lordships have held as under:-

"It is well settled that every action of the State or an instrumentality of the State in exercise of its executive power, must be informed by reason. In appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the Constitution. Reliance in this connection may be placed on

the observations of this Court in M/ s. Radha Krishna Agarwal v. State of Bihar, (1977) 3 S.C. 457: (AIR 1977 SC 1496). It appears to us, at the outset, that in the facts and circumstances of the case, the respondent-company IOC is an organ of the State or an instrumentality of the State as contemplated under Article 12 of the Constitution. The State acts in its executive power under Article 298 of the Constitution in entering or not entering in contracts with individual parties. Article 14 of the Constitution would be applicable to those exercises of power. Therefore, the action of State organ under Article 14 can be checked. See M/s. Radha Krishna Agarwal v. State of Bihar at p. 462 (at SCC) : (at p. 1499-1500 of AIR) (supra), but Article 14 of the Constitution cannot and has not been construed as a charter for judicial review of State action after the contract has been entered into, to call upon the State to account for its actions in its manifold activities by stating reasons for such actions. In a situation of this nature certain activities of the respondent company which constituted State under Article 12 of the Constitution may be in certain circumstances subject to Article 14 of the Constitution in entering or not entering into contracts and must be reasonable and taken only upon lawful and relevant consideration, it depends upon facts and circumstances of a particular transaction whether hearing is necessary and reasons have to be stated. In case any right conferred on the citizens which is sought to be interfered, such action is subject to Article 14 of the Constitution, and must be reasonable and can be taken only upon lawful and relevant grounds of public interest. Where there is arbitrariness in State action of this type of entering or not entering into contracts, Article 14 springs up and judicial review strikes such an action down. Every action of the State executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, in such monopoly or semi-monopoly dealings, it should meet the test of Article 14 of the Constitution. If a Governmental action even, in the matters of entering or not entering into contracts, fails to satisfy the test of reasoned

ableness, the same would be unreasonable. In this connection reference may be made to E. P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3 : (AIR 1974 SC 555); Maneka Gandhi v. Union of India, (1978) 1 SCC 248: (AIR 1978 SC 597), Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722: (AIR 1981 SC 487); R. D. Shetty v. International Airport Authority of India, (1979) 3 SCC 489: (AIR 1979 SC 162) and also Dwarkadas Marfatia and Sons v. Board of Trustees .of the Port of Bombay, (1989) 3 SCC 293 : (AIR 1989 SC 1642). It appears to us that rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumentality in dealing with citizens in a situation like the present one. Even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into. a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination in the type of the transactions and nature of the dealing as in the present case."

The Hon'ble Supreme Court has held in ***Doongaji and Co. (1) versus State of Madhya Pradesh and Others, 1991 Supp (2) SCC 313*** that no one can claim, as against the State, the right to carry on trade or business any intoxicants, nor the State be compelled to part with its exclusive right or privilege of manufacture, sale, storage of liquor, but when the State has decided to part with such right or privilege to the others, then State can regulate consistent with the principles of equality enshrined under Article 14 and any infraction in this behalf at its pleasure and arbitrary violating Article 14. Their Lordships have held as under:-

"It is settled law by several decisions of this Court that there is no fundamental right to a citizen to carry on trade or business in liquor. The State under its regulatory power, has power to prohibit absolutely and form of activity in

relation to an intoxicant, its manufacture, possession, import and export. No one can claim, as against the State, the right to carry on trade or business any intoxicants, nor the State be compelled to part with its exclusive right or privilege of manufacture, sale, storage of liquor, but when the State has decided to part with such right or privilege to the others, then State can regulate consistent with the principles of equality enshrined under Article 14 and any infraction in this behalf at its pleasure and arbitrary violating Article 14. Therefore, the exclusive right or privilege of manufacture, storage, sale, import and export of thee liquor through any agency other than the State would be subject to rigour of Article 14. Vide *Har Shankar v. Dy. Excise & Taxation Commissiner and State of M.P. v. Nandlal Jaiwal.*

When the State was dealing with the grant of the privilege of establishing or manufacturing intoxicants, rectified spirit or denatured spirit, spirit (countrymade liquor) in a distillery owned or regulated by it, and invites tenders in this regard it should conform to the rigour of Article 14 of the Constitution. Admittedly, the licence of the appellant expired on March 31, 1981 and thereafter it has no right to manufacture and store at distillery in Ujjain and distribution as wholesaler of the countrymade liquor from the attached warehouses to the retail vendors within the area granted to the respondent. But for the stay granted by the High Court the operation of the respondent's licence was to begin on April 1, 1981. The outgoing licensee, the appellant, had to hand it over to the respondent on that date. The conditions in the licence P-2 postulate mutual rights and obligations between the outgoing licensee to sell and the incoming licensee to purchase the plant and machinery of the distillery, stock-in-trade and also the machinery in the warehouse including the apparatus, etc. enumerated in the conditions either at the price fixed or agreed directly between the parties or fixed by the committee of the designated officers. In case of any difference in the

valuation between the members, the Commissioner of the Excise or the State Government would fix the valuation, which was made final. The committee designated was to be constituted with prior approval of the government as per condition 50 to evaluate the plant and machinery of the distillery and some of them of the warehouses. Outgoing licensee also is entitled to be represented in the committee. On his non-cooperation the rest of the four members of the committee are empowered to determine the value."

Their Lordships of the Hon'ble Supreme Court have held in ***Food Coorporation of India versus M/s Kamdhenu Cattle Feed Industries, (1993) 1 SCC 71*** that in contractual sphere as in all other State actions, the State or its instrumentalities have to conform to Article 14 of which non-arbitrariness is a significant facet. It is further held that a public authority possesses powers only to use them for public good. Their Lordships have held as under:-

"In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Art, 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is 'fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision-making process in all State actions. To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the

reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review."

The Hon'ble Supreme Court has held in ***Bharat Petroleum Corporation Ltd. versus Maddula Ratnavalli and others, (2007) 6 SCC 81*** that reasonableness and non-arbitrariness are hallmarks of any action by the State and reasonable action is required on the part of the State even where it is acting 'land-lord', 'tenant' and in a 'contractual matters'. Their Lordships have held as under:

"The appellant company is a "State" within the meaning of Article 12 of the Constitution of India. It is, therefore, enjoined with a duty to act fairly and reasonably. Just because it has been conferred with a statutory power, the same by itself would not mean that exercise thereof in any manner whatsoever will meet the requirements of law. The statute uses the words "if so desired by the Central Government". Such a desire cannot be based upon a subjective satisfaction. It must be based on objective criteria. Indisputably, the 1976 Act is a special statute. It overrides the provisions of Section 107 of the Transfer of Property Act. The action of the State, however, must be judged on the touchstone of reasonableness.

This Court number of times has laid emphasis on reasonable action on the part of the State even as a landlord. (See Dwarkadas Marfatia & Sons v. Board of Trustees of the Port of Bombay, (1989) 3 SCC 293 and in

contractual matters – Noble Resources Ltd. versus State of Orissa, (2006) 10 SCC 236 and State of Karnataka versus All India Manufacturers Organization, (2006) 4 SCC 683

Reasonableness and non-arbitrariness are the hallmarks of an action by the State. Judged from any angle, the action on the part of the appellant does not satisfy the test of fairness or unreasonableness. It being wholly arbitrary cannot be sustained.

In any event, when two views are possible, a view which satisfies the constitutional rights or requirements, must be preferred".

It is thus well settled by now that the State's decision should be non-arbitrary and reasonable and it must conform to the rule of law and constitutional values, failing which their actions will be termed as violative of Article 14 of the Constitution of India. In the present case, the respondent No. 2 has failed to take into consideration the above cited principles while dealing with the matter.

During the course of hearing, the petitioner has also filed affidavit sworn on 7th September, 2007 stating therein that in similar circumstances regarding allotment of vend Unit No.3 L-2 Dhalpur and L-2 Gandhinagar which was made to Kanu Priya, was cancelled by respondent No.4 on the ground that the signatures on applications for allotment and general power of attorney were not the same and the re-allotment was made in favour of second panelist i.e. Sh. Sunil Kumar. The Court directed respondents No.1 to 4 to file the reply to this affidavit. Consequently the supplementary affidavit was filed by respondent No.2 on 18th October, 2007. It is apparent from the order dated 12th March, 2007 passed by the Deputy Commissioner-cum-Chairman of Allotment Committee that the committee members themselves have ascertained the genuineness of the signatures of Kanu Priya and consequently came to the conclusion that the same

were not valid and allotment made in her favour was cancelled and the allotment was made in favour of Shri Sunil Kumar son of Shankar Dass.

The position which emerges is that two different yardsticks have been adopted by the same set of Officers while dealing with similar situation. As far as the present case is concerned, respondent No.2 had chosen to send the signatures for comparison to the Government Examiner of Questioned Documents and despite the receipt of report, he had not chosen to take any action against respondent No.5 but as far as the case of Kanu Priya is concerned, the committee itself had deliberated upon the comparison of the signatures and had cancelled the allotment by coming to the conclusion that her signatures on documents were not genuine. The adoption of two different yardsticks has not been explained satisfactorily by respondents No.1 to 4. It further strengthens the submission made by Mr. Bimal Gupta, Advocate that his client has not been dealt with in a just and fair manner and respondent No.5 has been unduly favoured while making allotment in his favour vide order dated 30th March, 2007.

The upshot of the above discussion is that:

i) **the decision of respondent No.2 to permit the licencee of the previous year 2006-07 i.e. M/s Jaswant Rai and Company to run the vend in question for one month vide order 30th March, 2007 was bad;**
ii) **respondent No.2 could not decide the matter at his own level when this Court was seized of the matter in CWP No. 446/2007;**
iii) **respondent No.2 had come to a wrong conclusion as per order dated 28th April, 2007 that the matter was settled and no action was required to be taken on the report dated 15th May, 2007 of the Government Examiner of Questioned Documents;**
iv) **respondent No.2 was bound to take action immediately after the receipt of the report dated 15th May, 2007 instead**

of delaying the matter by seeking the opinion of the Law Department;

v) **the opinion of the Law Department is not based on the correct interpretation of law and the same is also against the well reasoned report dated 15th May, 2007. It appears that the Law Department even has not cared to go through the report dated 15th May, 2007 of the Government Examiner of Questioned Documents;**

vi) **this Court had not decided the matter in CWP No.446 of 2007 and the observations made by respondent No.2 that the matter was settled by this Court is contrary to record;**

vii) **respondent No.2 after taking the decision on the basis of the report was required to review the order dated 21st April, 2007 and was bound to make allotment in favour of petitioner;**

viii) **though it was not mandatory for the applicants to be present at the time of draw of lot before the Selection Committee, but if the applicant or his representation had chosen to be there, the same was to be in accordance with law; and**

ix) **Sh. Sandeep Chawla was not duly authorized by the applicant to be present on 12th March, 2007 and any participation of Sh. Sandeep Chawla on behalf of respondent No.5 was contrary to law.**

Consequently, the writ petition is allowed. Annexure P-6 dated 21.4.2007 is quashed and set aside. Respondent No.2 is directed to make the allotment in favour of petitioner being at Sr. No.2 of the panel within a period of two weeks from today. There shall be no order as to costs.

(Rajiv Sharma), Judge

November 12, 2007
Awasthi